



DIVISION OF
ENFORCEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

100 F STREET, N.E.
WASHINGTON, D.C. 20549

Cheryl L. Crumpton
Supervisory Trial Attorney
Direct Dial: 202-551-4459

March 25, 2019

By ECF

The Honorable Alison J. Nathan
United States District Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: SEC v. Musk, No. 18-cv-08865-AJN

Dear Judge Nathan:

After reviewing Defendant Elon Musk's sur-reply memorandum, the SEC maintains that an evidentiary hearing is unnecessary because there are no material issues of disputed fact.

It is also unnecessary for the Court to consider settlement communications to interpret the clear and unambiguous language of its order. *See Red Ball Interior Demolition Corp. v. Palmadessa*, 173 F.3d 481, 484 (2d Cir. 1999) (plain language of settlement agreement controls absent ambiguity, and "a party cannot create an ambiguity in an otherwise plain agreement merely by urging different interpretations in the litigation." (internal quotation omitted)). However, Musk's selective omission of certain settlement communications from his submission results in a misleading depiction of the parties' negotiation of the pre-approval requirement. For that reason, if the Court considers settlement communications to resolve the pending motion, the SEC requests leave to provide the Court with additional written settlement communications that specifically address the clause that requires Musk to submit for pre-approval all written communications that reasonably could contain information material to Tesla or its shareholders.

The SEC is happy to provide any additional briefing or argument requested by the Court.

Respectfully submitted,

A handwritten signature in blue ink that reads "Cheryl Crumpton".

Cheryl Crumpton